

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : Scott P. SCHREER
Serial No. : 10/086,089
Filed : February 28, 2002
Title : SYSTEM AND METHOD FOR ACCESSING....
Examiner : Jason P. SALCE
Group Art Unit : 2421
Confirmation No. : 3357

June 2, 2009

REPLY BRIEF FOR APPELLANT

Mail Stop: Patent Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R:

In reply to the Examiner's Answer dated April 24, 2009, please note Customer No. 26304, please charge any fees, including any necessary extension fees, to Deposit Account 50-1290.

Applicant had submitted a first Brief on April 17, 2008. In response, the Examiner reopened prosecution and in a new Office Action dated July 24, 2008, the Examiner cited new rejections, one under 35 U.S.C. §112, 2nd par. and the other a new rejection under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) citing Pittman.

Rather than responding to the Examiner's new rejections, Applicant continued with the appeal process, because the Applicant respectfully believed the Examiner was substantially incorrect.

Applicant is pleased that the Examiner has now withdrawn the new rejections. While it is appreciated that these rejections have been withdrawn, it is unfortunate that Applicant had to incur unnecessary expense and loss of time to overcome improper rejections. For example, the 35 U.S.C. §112 rejection was rejecting language that was not even present in the claim.

However, the rejections under 35 U.S.C. §103(a) citing U.S. Patent No. 6,253,193 to Ginter in view of U.S. Patent No. 6,385,596 to Wiser continue to be maintained. In connection with certain claims, the rejections rely on Ginter and Wiser and additional references.

The rejections argue that the reference of "broadcast" and "digital broadcast" in Ginter corresponds to applicant's **"public broadcast."** In support thereof, reference to specific sections of Ginter, all of which simply state "broadcast." The Examiner concludes that Ginter's "broadcast" must be a "public broadcast."

The entire purpose of the Ginter invention is to avoid public dissemination. A "public broadcast" is the direct antithesis of the entire Ginter patent. From the very beginning, in col. 1, lines 14-20, Ginter defines what his invention is. He states as follows:

"More particularly, this invention relates to systems and techniques for secure transaction management. This invention also relates to computer based and other electronic appliance-based technologies that help to insure that information is accessed and/or otherwise used only in authorized ways, and maintains the integrity, availability and/or confidentiality of some information and processes related to such use." (Emphasis added.)

Accordingly, Ginter only wants to send out information when it is controlled, secure, when it is used only by authorized users, and only when the entire transmission can be controlled

and directed to a specific user. It is for this reason he introduces the “virtual distribution environment” (VDE) for such secure direct targeted communication.

Public broadcast is just what Ginter does not want. Since that is not controlled, but is disseminated without any control. Respectfully, the rejection’s use of “broadcast” is read in disregard of the context used by Ginter and is factually and legally incorrect.

Indeed, Applicant respectfully submits that the rejection ignores the remainder of Ginter’s teaching in the same paragraph upon which the rejection is based. For example, col. 3, lines 21-33 is used to explain which items can be transmitted using a “digital broadcast”. Applicant does not contest that Ginter uses a broadcast or a digital broadcast. However, what Applicant contends is that it is a specifically directed broadcast to a particular request by a user. It is not a general public broadcast regardless of whether the user has requested it or not.

This requested broadcast is recited in the very same paragraph that the examiner himself quotes. Specifically, this col. 3, lines 21-33 deals with the VDE identified as a “virtual distribution environment”. The entire aspect of Ginter is to use this VDE. These lines state:

“VDE allows the owners and distributors of electronic digital information to reliable bill for, and securely control, audit and budget the use of electronic information. It can reliably detect and monitor the use of commercial information products.” (Emphasis added.)

Accordingly, the entire purpose of VDE is to bill for specific requested use of specific information. If there is no request for the use of it, there is no “broadcast” of it. It is all based upon a user’s request for particular information and billing the user for such request for the requested use of the information.

Ginter does indicate how the information can be delivered to that user who requested the information. Specifically, Ginter recites in the same paragraph:

“VDE uses a wide variety of different electronic information delivery means: including, for example, digital networks, digital broadcasts and physical storage media, such as optical and magnetic discs.” (Emphasis added.)

Applicant respectfully submits that the paragraph is directed to teaching that the information to the specific user who requested the information can be sent by a digital broadcast. Moreover, the information is being sent only in reply to a specific request by a user who will be billed for it. Applicant respectfully submits that nothing therein teaches a public broadcast.

The other paragraphs relied on in the rejection similarly fail to teach, disclose, or suggest a public broadcast. For example, Ginter at col. 14, lines 5-28 and col. 18, lines 1-13 again teaches only specific distribution methods to requested users. As clearly recited in col. 14, lines 27 and 28 of Ginter:

“The use of all portions of commercial information is enforced.”

Likewise, in col. 18, lines 1-13 referred to by the examiner, Ginter also states that these delivery means are for “VDE Managed Content.”

Indeed, other portions of Ginter clearly indicate that the VDE is only used for areas that are under complete control of the content’s use. Please see col. 9, lines 20-60; col. 23, lines 50-60, etc. The entire purpose of VDE is to control the content to specific users who requested the information and bill them for such specific requested use.

This was clearly stated in the affidavit by Prof. Memon, an expert in the field, who reviewed the entire Ginter reference and concluded:

“9. Ginter is essentially interested in buying and selling of media. He describes a system, referred to as a “Virtual Distribution Environment” (VDE) which regulates, monitors and controls all information transmitted. (See column 6, lines 32-57). Ginter deals with interactions between the seller of the information which is transmitted within the VDE and the buyer which receives the information. Ginter is essentially interested in

an area of commerce which is different from that of Schreer. The entire domain and area being addressed is substantially different.” (See column 3, lines 22-33, column 9 lines 35-61).

Ginter is concerned with transmitting information from a seller to a specific buyer and controlling the use of the information by the buyer. When Ginter refers to a broadcast, he refers to a specific communication between a seller and a particular user or buyer of the product which is transmitted within the container referred to as a VDE. Ginter is not interested in a public broadcast to multi-users.

Ginter monitors the specific receiving by the user. Any sending of the information is only monitored at the receiving end by the user. In Schreer, he is interested in monitoring the information based upon its being sent.”

Nothing in the cited sections Ginter teaches, discloses, or suggests to one skilled in the art that Ginter is involved in a “public broadcast” to the general public without a specific request by a user for a specific piece of information.

The Examiner’s Answer alleges at the bottom of the page 17 that “[a]pplicant has made no reference to the portions of Ginter that teach a broadcast is only transmitted upon request from a user.” Applicant respectfully submits that the Examiner is in error.

All of the above arguments, all of the above citations, all of the above statements by expert Prof. Memon, all of the references to Ginter cited above, and numerous others have been made previously and have been of record in Applicant’s arguments.

The Examiner’s Answer also alleges that Ginter teaches “that if data is broadcast it is transmitted regardless of a request from the user.” Applicant respectfully disagrees. The crux of Ginter lies in providing data responsive to a user request. If no request is made, the system of Ginter remains silent and does not transmit data. In other words, Ginter requires at least one user to make a request and receive the data.

In contrast, in the presently claimed invention the broadcast does not require even a single audience member. Specifically, independent claim 1 recites “ . . . *data related to the public broadcast and unrelated to whether even any user constituting the audience members of the public have received the broadcast . . .*” and independent claim 9 recites “ . . . *data related solely to the performance when it is broadcast and unrelated to whether there is even any actual use by the receiving audience . . .*” Emphasis added.

Thus, unlike Ginter, nothing in the presently claimed invention requires the presence of the audience, since the presently claimed invention is dedicated to the sending side. Ginter in contrast requires a user to make a request.

With respect to **monitoring**, the Examiner’s Answer at page 16, in the center, alleges that Ginter teaches monitoring only the broadcast as per cols. 253 and 254. Applicant respectfully submits that the grounds of rejection are taking a word out of context without appreciation of the entire teachings of Ginter.

Applicant’s claims are directed to the monitoring at the sending end, namely the fact that a broadcast is sent out to the public. Whether that broadcast is even used or not, whether it is used by one or many is irrelevant. Applicant is not monitoring the usage, but rather is monitoring the sending out; i.e. the broadcast transmission.

Indeed, Ginter utilizes the verb “monitors.” However, this does not mean that Ginter monitors the same as in Applicant’s claims. Regrettably, the Examiner Answer appears to overlook the distinction and, respectfully, only focuses on “monitors” without the context needed by one skilled in the art.

By way of example, referring to the same paragraphs as used in the rejection, col. 253, starting with line 65, and going on to col. 254, Ginter’s teachings must be carefully noted. At the bottom of col. 253, the last line, Ginter clearly says that what he is monitoring is “controlled

use”. It is, thus, the “use” that Ginter is monitoring and it is the control of such uses that Ginter desires.

Likewise, on col. 254, lines 7 and 8, Ginter indicates that they want to “*administer and analyze customer’s use.*” Emphasis added. Thus, Ginter is monitoring is not the fact that a broadcast was sent out, but that a broadcast is being used. Likewise in col. 254, lines 9 and 10, Ginter clearly states that the monitoring is “*when they use information.*” Emphasis added.

Accordingly, Applicant respectfully submits that the rejection’s cited references to “monitor[ing]” information are, in fact” directed to monitoring the usage of the information once received and not monitoring the transmission. In view of this, Applicant respectfully submits that the conclusion in the Examiner’s Answer at page 16, that “*all of these examples teach monitoring at a public broadcast at various locations of the distribution network*” is factually and legally incorrect.

There is no “public broadcasting” in Ginter, there is no monitoring of any transmitted broadcast. There is only monitoring of a user’s requested use and analyzing the customer’s use in a controlled manner in Ginter.

Prof. Memon, an expert in his field, has analyzed Ginter in its entirety and concluded that Ginter does not have monitoring of any “public broadcast” but only monitoring the specific receiving by the user based upon his request.

In contrast to the presently claimed invention, without a user’s request, there is no broadcast in Ginter. In the presently claimed invention, public broadcast is claimed as being one of a radio, television, cable, satellite network, and internet website and is capable of being remotely receivable simultaneously by a plurality of audience members of the public capable of receiving the audio signal. The broadcast of Ginter does not encompass these aspects.

It is respectfully contended that the presently claimed invention clearly distinguishes over the references.

CONCLUSION

For the foregoing reasons, the final rejection of the claims should be reversed.

FEES

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1290, and please credit any excess fees to said deposit account. Applicant is not entitled to the small entity rate.

Respectfully submitted,

/Hassan A. Shakir/

Hassan A. Shakir
Reg. No. 53,922
212.940.6489

CUSTOMER NUMBER 026304

Direct Phone: (212) 940-8683

Docket: 058201-00050